

# Agenda

## Item #5



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Agenda Item #5

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: October 19, 2010

Re: Request by Maine Republican Party Concerning Elizabeth Mitchell

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This memo contains some preliminary thoughts on the request by the Maine Republican Party concerning Elizabeth Mitchell's television advertisement, "Family." The theme of the ad is keeping Maine a great place to raise a family. In the ad, each of her four children explains on camera why they moved back to Maine after living elsewhere. Their names are displayed briefly as they talk. (A sample shot from the ad, displaying Emily Mitchell, is attached.) There are also video shots of the candidate's extended family, including her husband.

Three members of Sen. Mitchell's family are candidates: her husband, James, is running unopposed for Judge of Probate, and her children Emily and Will are running for the Maine House of Representatives and Portland City Council, respectively. The advertisement does not mention or indirectly suggest that they are candidates.

Through its counsel, Dan Billings, the Maine Republican Party alleges that the ad violates 21-A M.R.S.A. § 1125(6), which requires that candidates in the Maine Clean Election Act (MCEA) program must use their public campaign funds "for campaign-related purposes." As required by the statute, the Commission has developed "guidelines outlining permissible campaign-related expenditures." (attached) The guidelines state that MCEA funds received by one candidate may not be used to assist in any way the campaign of another candidate or to be used as an independent expenditure to support another candidate.

I have attached a response from Kate Knox, counsel for the Mitchell campaign.

### **Relevant Law**

#### *Definition of Contribution*

In the Election Law, a contribution to a candidate is defined as:

A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office .... (21-A M.R.S.A. § 1012(2)(A)(1)) (emphasis added)

#### *Expenditures by Outside Groups Coordinated with a Candidate*

If a candidate coordinates with an outside group on an expenditure to promote the candidate's election, the candidate has received an in-kind contribution:

Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate. (21-A M.R.S.A. § 1015(5))

#### *Independent Expenditures (statute attached)*

Like other states, Maine Election Law contains a reporting requirement for expenditures made by outside groups that independently spend money on communications that support or oppose candidates. Most often these "independent expenditures" are made by political parties and political action committees (PACs). If the group is required to file an independent expenditure report, the report must contain an affidavit stating that the expenditure was made independently of the candidate.

Maine's independent expenditure statute (21-A M.R.S.A. § 1019-B) contains two different standards, depending on when the communication is distributed to voters:

##### Express Advocacy (applicable at all times)

A report is required for communications to voters that "expressly advocate[] the election or defeat of a clearly identified candidate ...." (21-A M.R.S.A. § 1019-B(1)(A))

##### Presumption in MCEA Races (applies after September 29, 2010)

If there is an MCEA candidate in the race and a communication is distributed to voters in the last 35 days before a general election, the communication is presumed to be an independent expenditure if a communication merely names or depicts a clearly identified candidate. (21-A M.R.S.A. § 1019-B(1)(B))

#### **July 2010 Advice from Commission Staff**

The Commission staff believes that the Mitchell campaign acted in good faith by including the candidate's family in the ad. On July 12, 2010, the counsel for the Mitchell campaign, Kate Knox, wrote to Commission employee Gavin O'Brien and asked whether the campaign could include the candidate's children in a television ad. Ms. Knox

mentioned that Emily Mitchell was a publicly funded candidate for the Legislature and asked whether it was a problem if Emily Mitchell appeared in a statewide ad for her mother.

Gavin responded that the Commission staff could not give specific advice without seeing the ad. He cautioned that the inclusion of Emily Mitchell could invite a complaint by her opponent. Nevertheless, he suggested that if the ad did not mention that Emily Mitchell's candidacy, that would support a determination that the ad was not a contribution to Emily Mitchell's campaign.

### **Preliminary Staff Analysis**

#### *Assistance or Contribution*

The Commission staff believes that the relevant compliance questions are:

- (1) Is the advertisement a contribution to the campaigns of Emily, Will, or James Mitchell?
- (2) Does the advertisement "assist" the campaigns of Emily, Will, or James Mitchell?

We tend to think that any impact on Emily Mitchell's race or Will Mitchell's race is so attenuated that there is no contribution to their campaigns. The primary reason is that their candidacies are not mentioned. The other bullet points on pages 2-3 of Ms. Knox's response are relevant as well. Arguably, the ad could increase the name recognition of the candidates in their districts, but that would depend on the viewer connecting the personality in the ad (identified only by their name) to the local candidate for public office. James Mitchell is not identified in the ad, and he does not appear in his own segment of the ad. As mentioned above, James Mitchell is running unopposed.

We also think it is fairly clear that the purpose of the advertisement is not to promote the election of Emily, Will, or James Mitchell. We therefore believe the ad is not a contribution to their campaigns under 21-A M.R.S.A. § 1012(2)(A)(1)).

In an e-mail exchange with Dan Billings late today, he cautioned that allowing MCEA candidates to mention other candidates in communications to voters could lead to a loophole. That is a valid point, and the Commission may need to refine its guidance to candidates under what (rare) circumstances MCEA funds may be used by one candidate to mention another candidate. For example, the Commission recently advised Senate candidate Tom Saviello that he could appear in mailings paid for by three House candidates (some of which are in the MCEA program) in order to endorse the three House candidates. The Commission advised it was acceptable as long as Tom Saviello's candidacy was not mentioned and the mailers contained no supportive statements concerning Tom Saviello.

### *Independent Expenditure Statute*

The staff believes that the presumption in 21-A M.R.S.A. § 1019-B(1)(B) does not apply to the ad, even though Emily Mitchell is mentioned in the ad. That is because the Emily Mitchell participated in the making of the ad. The independent expenditure reporting statute was intended by the Maine Legislature to cover communications which are made independently of the candidates mentioned in the ad. That is why someone making an independent expenditure is required – as part of the report – to sign an affidavit that the report was made independently of the candidates mentioned in the communication.

This legislative intent is reflected in the Commission's regulations. The Commission has stated in its rules that any expenditure in which the candidate has cooperated "is not an independent expenditure":

"Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

(Chapter 1, Section 10(2)(C))

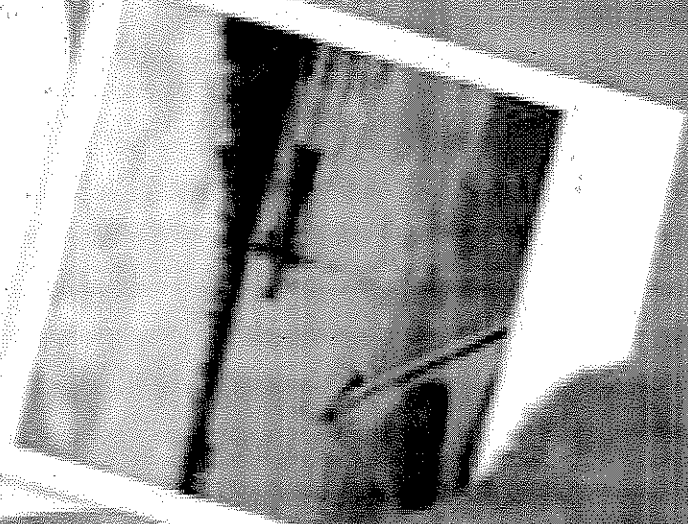
Dan Billings analogizes the Mitchell advertisement to a 2008 mailer sent by Republican Senate candidate Valerie Carr-Winocour. I have attached the mailer. In that case, the Commission found that the mailer was a misuse of MCEA funds and an independent expenditure against the Democratic House candidates mentioned in the mailer.

That mailer is distinct from the Mitchell "family" ad because it mentioned the candidacies of the Democratic House candidates. It labeled the candidates as House members and suggested that they should be turned out of office. The mailer was found to be an independent expenditure because it expressly advocated for the defeat of the Democratic House candidates by stating: "Please feel free to save this flyer and bring it with you on election day so you know who NOT to vote for ...."

In contrast, the Mitchell "family" ad does not include any advocacy whatsoever with respect to Emily, Will, or James Mitchell. We do not see them as analogous.

Thank you for your consideration of this memo.

# Emily Mitchell





## 2010 EXPENDITURE GUIDELINES

### For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

#### PERMISSIBLE CAMPAIGN-RELATED EXPENDITURES

Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:

- Printing and mailing costs;
- Political advertising expenses;
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
- Office supplies;
- Campaign events (e.g., food, rent of tent or hall, etc.);
- Campaign staff expenses;
- Campaign travel expenses, such as fuel and tolls; and
- An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign.

#### PROHIBITED EXPENDITURES

**Candidates may not use MCEA funds for personal expenses.** This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household food items and supplies;
- Vehicle and transportation expenses unrelated to the campaign;
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
- Clothing, including attire for political functions such as business suits or shoes.

#### Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
- pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
- make a thank-you gift (including a gift card) to a volunteer or supporter;
- compensate the candidate for services provided by the candidate;
- make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
- promote political or social positions or causes other than the candidate's campaign;
- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
- assist the candidate in a recount of an election.



## GUIDELINES ON SELECTED ISSUES

**Electronics and Other Personal Property.** Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the final report for the campaign, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.

**Food.** Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse. Gubernatorial candidates may use MCEA funds to purchase meals for the candidate and/or the candidate's spouse if associated with travel for campaign purposes.

**Car Travel.** MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2010, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.44. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.

**Lodging.** Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.

**Post-Election Notes and Parties.** Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates, \$750 for State Senate candidates, and \$2,500 for gubernatorial candidates. Candidates may also use personal funds for these purposes.

**Campaign Training.** Candidates may use MCEA funds for tuition or registration costs to receive training on campaigning or policy issues.

**Salary and Compensation.** Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

## REQUIRED RECORD-KEEPING

The MCEA requires participating campaigns to keep bank or other account statements for the campaign account covering the duration of the campaign. For every expenditure of \$50 or more, the campaign must also keep:

- (1) an invoice from the vendor stating the particular goods or services purchased, and
- (2) a cancelled check, cash receipt, or other acceptable proof that the vendor received payment.

For any services provided to the campaign by a vendor for which the campaign paid \$500 or more for the election cycle, the campaign must keep an invoice, timesheet, or other document specifying in detail the services the vendor provided, the amount paid and the basis for the compensation paid by the campaign. Please select a treasurer who will be responsible about keeping these records.

## AUDITING AND COMPLIANCE

In 2010, the Commission staff will audit all gubernatorial candidates receiving MCEA funding and at least 20% of MCEA legislative candidates. The staff will review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.



**From:** Kate Knox [mailto:kknox@bernsteinshur.com]  
**Sent:** Monday, July 12, 2010 5:26 PM  
**To:** O'Brien, Gavin; Wayne, Jonathan; Lavin, Paul  
**Subject:** Mitchell Ads with Emily Mitchell

Gavin

We are considering using Libby's children in her new ads – but realize that one of her children (Emily) is a clean elections candidate for the legislature. I seem to remember a discussion about candidates appearing in ballot ads – but I can't seem to find anything in my notes. Obviously, if Emily appears we would not be speaking about her candidacy or mentioning her candidacy at all. Do you see a problem with Emily appearing in a statewide ad for Libby?

Kate

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Katherine R. Knox, Esq.

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Portland, ME | Augusta, ME | Manchester, NH

**Confidentiality notice:** This message is intended only for the person to whom addressed in the text above and may contain privileged or confidential information. If you are not that person, any use of this message is prohibited. We request that you notify us by reply to this message, and then delete all copies of this message including any contained in your reply. Thank you.

**IRS notice:** Unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding tax-related penalties under the Internal Revenue Code, or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

**From:** O'Brien, Gavin  
**Sent:** Wednesday, July 14, 2010 12:55 PM  
**To:** kknox@bernsteinshur.com  
**Cc:** Lavin, Paul; Wayne, Jonathan  
**Subject:** RE: Mitchell Ads with Emily Mitchell

Our view as Commission staff is that there is some risk in airing an ad that includes Emily Mitchell. Similar situations have caused feelings of unfairness among opponents, who see the ad as free publicity for the candidate. It is possible that a complaint could be filed and it would go before the Commission. Two similar questions about candidates appearing in ads have been considered by the Commission. In both cases, there were requests for advice but no complaints were filed, so the Commission did not make motions addressing the specifics of each case.

At the October 17, 2008 Commission meeting, Rep. Alex Cornell du Houx appeared in an ad for VoteVets.org that did not mention his candidacy. The opinion of the Commission members seemed to be that they did not consider the ad to be a contribution to Rep. Cornell du Houx since it was not made with the intent to influence his election.

At the May 27, 2010 Commission meeting, Rep. Thomas Saviello asked the Commission for advice about whether the use of his endorsement in a campaign communication by another candidate would be consistent with Maine campaign finance law and whether the staff could assure him that it would not be considered an in-kind contribution. The Commission declined to take specific action other than to pass a motion authorizing the staff to provide advice on endorsements. In general, the Commission members appeared to agree with our proposed staff policy:

Campaign materials paid/or one candidate which contains an endorsement by another candidate are not contributions to the endorsing candidate, provided that the communication

- does not mention the candidacy of the endorsing candidate, and
- contains no promotional or supportive statements concerning the endorsing candidate.

It is difficult for us to give the Mitchell campaign specific advice since the Commission members have been clear that their decision would depend on the content and context of the ad. However, given the Commission's decision in 2008 and its agreement with the proposed staff guidance in 2010, the staff believes that there are factors in the present situation - that Emily is the daughter of the candidate and would, presumably, appear in the ad whether she was a candidate or not, and that the ad does not mention or promote Emily's candidacy in any fashion or even identify Emily as a candidate - which could weigh favorably in a determination that the ad was not an in-kind contribution by the Mitchell for Governor campaign to Emily Mitchell. Yet, because people have questioned such ads in the past, we believe you should be aware that running an ad that includes another candidate could open the campaign up to a complaint being filed.

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**MARDEN, DUBORD,  
BERNIER & STEVENS**

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ATTORNEYS AT LAW

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October 19, 2010

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Complaint against Libby Mitchell & the Libby Mitchell for Governor Committee**

Dear Mr. Wayne:

On behalf of the Maine Republican Party, I request that the Commission investigate the illegal use of Maine Clean Elections funds by the Libby Mitchell for Governor Committee and Libby Mitchell's violation of the limits placed on Maine Clean Elections candidates by Maine law.

The Libby Mitchell for Governor Committee is currently running a television advertisement that features members of Ms. Mitchell's family. The ad can be seen here: <http://www.youtube.com/watch?v=QcWHdgAIogI>. Included in the ad are James Mitchell, Ms. Mitchell's husband who is currently a candidate for Judge of Probate in Kennebec County; Will Mitchell, Ms. Mitchell's son who is currently a candidate for City Council in Portland; and Emily Mitchell, Ms. Mitchell's daughter who is currently a candidate for the Maine House of Representatives in House District #58. Emily Mitchell and her opponent, Karen Foster, are both Maine Clean Elections candidates. Emily and Will Mitchell are both featured prominently in the ad; identified by name on the screen; and speak about why they returned to Maine.

21-A M.R.S.A. §1125(6) states that "[a]ll revenues distributed to a certified candidate from the fund must be used for campaign-related purposes." To assist candidates in complying with this requirement, the Commission has adopted expenditure guidelines which detail what is, and is not, a campaign-related purpose. The guidelines state that Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot question, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated; and
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services.

The definition of independent expenditure includes "in races involving a candidate who is certified as a Maine Clean Election Act candidate . . . any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during . . . the 35 days, including election day, before a general election; or during a special election until and on election day." 21-A M.R.S.A. §1019-B(1)(B).

Emily Mitchell is a candidate involved in a race involving a candidate who is a certified Maine Clean Election candidate. She is a candidate who is named, depicted, and clearly identified in the Libby Mitchell for Governor Committee TV ad. The ad is being disseminated during the 35 days before the general election. By definition, the Libby Mitchell for Governor Committee TV ad is an independent expenditure for Emily Mitchell and the use of Maine Clean Elections funds to finance an independent expenditure is a violation of 21-A M.R.S.A. §1125(6).

In addition, the Commission should consider whether the ad "assist(s) in any way" the campaign of Will Mitchell for City Council or James Mitchell for Judge of Probate. If so, that would be another basis for finding a violation.

As you know, the Commission has previously found that the use of Maine Clean Elections funds to finance communications featuring candidates other than those involved in the particular race violates Maine law. I see no reason that the Libby Mitchell for Governor ad should be looked at differently. On behalf of the Maine Republican Party, I ask that the Commission find that Libby Mitchell and the Libby Mitchell for Governor Committee violated 21-A M.R.S.A. §1125(6); that a civil penalty be imposed; and that the Commission authorize matching funds for Karen Foster, Emily Mitchell's Clean Elections opponent.

21-A M.R.S.A. §1002(1) requires that agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise. Therefore, I ask that this complaint be considered at the Commission's meeting scheduled for tomorrow.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billing", written over a horizontal line.

Daniel I. Billing

## **BERNSTEIN SHUR**

**COUNSELORS AT LAW**

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October 19, 2010

Jonathan Wayne  
Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333

**RE: RESPONSE TO COMPLAINT AGAINST MITCHELL FOR GOVERNOR  
CAMPAIGN TELEVISION ADVERTISEMENT**

Dear Mr. Wayne:

On behalf of my client, the Mitchell for Governor Campaign (the "Mitchell Campaign"), please accept the following response to the complaint filed by the Maine Republican Party with the Commission dated October 19, 2010 (the "Complaint"). The Complaint alleges that the appearance of Emily Mitchell, Will Mitchell and Jim Mitchell in portions of a campaign ad (the "Family Ad") promoting her gubernatorial candidacy constitute an improper use of Maine Clean Election Act Funds – despite the fact that the funds were used solely to promote the Mitchell Campaign.

**BACKGROUND**

Emily Mitchell is the youngest daughter of gubernatorial candidate Libby Mitchell and Jim Mitchell, is the owner and operator of Lupine Farm located in Vassalboro Maine and a Maine Clean Elections candidate for House District 58. Will Mitchell is the oldest son of gubernatorial candidate Libby Mitchell and Jim Mitchell. He owns and operates his own business in Portland Maine and is a candidate for the Portland City Council. Jim Mitchell is Libby Mitchell's spouse and is currently a candidate for Judge of Probate in Kennebec County.

In all large campaigns, candidates generally produce a series of television advertisements designed to put forth a variety of issues and personal biographic information. The Family Ad is a combination of both those issues – designed to highlight Libby's focus on education, her commitment to providing Maine children (including her own) the opportunity to return home to Maine and start their own businesses. It was entirely logical in the formation of this advertisement that Libby would choose to feature *all* four of her children – all of whom have returned to live and work in Maine as adults. As you have seen, all four children are quickly featured and each recites why they returned to Maine. In later shots, spouses, grandchildren and her husband Jim are also included in the

visuals. None of the four children pictured is identified in any way other than their relationship to Libby. There are no references to other campaigns they may be involved in – and no mention of anyone’s prior or future political aspirations. The *only* purpose of the advertisement was to highlight Libby’s children and their return to Maine – and her commitment to providing that opportunity to all Maine kids.

**1. The Family Ad Falls Squarely Within the Enumerated “Traditional Campaign Expenses” Found in the Commission Guidance Describing Acceptable “Campaign-Related Purposes” under the MCEA.**

The Complaint alleges that the Family Ad somehow violates the statutory requirement that all MCEA Funds be used for “campaign-related” purposes. Despite this claim, and also included in the Commission guidance cited by the Republican Party (although not cited by them), political advertising expenses are *expressly* named as “traditional campaign expenses.” The guidance lists those expenses which are “traditionally accepted as necessary to promote the election of a candidate to political office.” Those expenses include “political advertising expenses.” The Family Ad produced by the Mitchell Campaign is a political advertising expense – pure and simple. As such, there is simply no credible argument that such advertising is not for a campaign related purpose.

**2. The Family Ad is Not An Independent Expenditure Supporting Any Candidate**

The Complaint further alleges that the use of Emily Mitchell’s name somehow transforms a legal campaign expense for Libby Mitchell into an Independent Expenditure for Emily Mitchell.

21-A M.R.S.A. § 1019(B) states that an Independent Expenditure is any expenditure made by a political committee for a communication that expressly advocates the election or defeat of a clearly identified candidate AND is presumed when an expenditure names or depicts a clearly identifiable candidate within 35 days before election day. The Mitchell Campaign contends the Family Ad contains absolutely no express advocacy – and in addition – simply depicts Emily Mitchell as one of the four children – and not as a candidate for any office.

Even if the references to Emily were found to fall within the Independent Expenditure definition, there is ample evidence to rebut the presumption that such expenditure occurred. For all the reasons below, the inclusion of Emily’s name and image do not constitute a contribution to her campaign:

- The subject of the advertisement is solely Libby Mitchell, her candidacy for Governor and her position on education and recruiting young people to stay in Maine;
- The Family Ad was broadcast statewide, not merely to House District 58;
- There is no mention of Emily Mitchell’s candidacy in House District 58. There is no discussion of her party affiliation, possible campaign platform or any call to support or oppose her candidacy;

- The value of the Family Ad to Emily Mitchell's campaign is so diffuse as to be inconsequential. To have any value to her at all, viewers must be able to draw their own connection between the Emily Mitchell portrayed as the daughter who "loves the outdoors" and the Emily Mitchell who is running as a House candidate in House District 58;
- The Mitchell Campaign is a statewide campaign organized solely to promote the candidacy of Libby Mitchell for Governor. It has not (and cannot) become involved in other statewide campaigns or ballot issues.
- The inclusion of family members in a candidate's advertising (both print and media) is common practice nationwide. To expect that candidates would exclude certain family members because of their private decision to run for local office puts both candidates and family members in an untenable situation. In the extreme, candidates can be accused of falsely representing the makeup of their families – and creates a needless political issue for candidates. In this instance, Emily Mitchell was featured in exactly the same way her three other brothers and sisters were – her exclusion would have been awkward and hard to explain to voters.

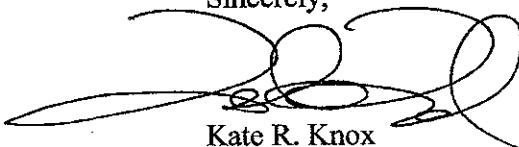
**3. The Family Ad Does Not "Assist" Any Candidate, Other than Libby Mitchell**

The Maine Republican Party further contends that the Family Ad improperly "assists" the campaigns of Will Mitchell and Jim Mitchell respectively. The Mitchell Campaign disagrees and refers to all the above enumerated reasons for specifics.

There is no evidence to suggest that the Family Ad produced by the Mitchell Campaign is being used for anything other than a lawful "campaign-related purpose." In addition, the inclusion of her children in the ad does not constitute a prohibited independent expenditure or assist in any way the completely separate and unrelated campaigns of Emily Mitchell, Will Mitchell or Jim Mitchell.

We look forward to providing the Commission with any additional information it may desire and hope, due to the compressed time frame of this response, that we are afforded the opportunity to address the Commission at tomorrow's meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate R. Knox", with a large, stylized flourish extending to the left.

Kate R. Knox



## 21-A MRSA § 1019-B. REPORTS OF INDEPENDENT EXPENDITURES

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW).]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day. [2007, c. 443, Pt. A, §20 (AMD).]

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

**3. (TEXT EFFECTIVE UNTIL 8/1/11) (TEXT REPEALED 8/1/11) Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 524, §6 (RPR).]

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2009, c. 524, §6 (RPR).]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2009, c. 524, §6 (RPR).]

This subsection is repealed August 1, 2011.

**4. (TEXT EFFECTIVE 8/1/11) Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election in a town or city that has chosen to be governed by this subchapter, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2. [2009, c. 524, §7 (NEW).]

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2009, c. 524, §7 (NEW).]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2009, c. 524, §7 (NEW).]

This subsection takes effect August 1, 2011.



2 More Years, Then I Can Run For Olympia's Seat. Let me introduce you to my pals from Penobscot County!

Gov. Baldacci



I Want To Be A Professional Politician Too! So Much So... That's the Occupation I list on The State Of Maine Website!

Sen. Liz Schneider

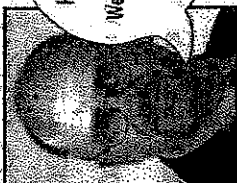
[\\*http://www.maine.gov/legis/senate/senators/bios/123rd/bio30s.htm](http://www.maine.gov/legis/senate/senators/bios/123rd/bio30s.htm)  
BIO States... Husbands (Brent), Occupation: Legislator.  
(We guess the concept of a part-time legislature has surpassed some people)



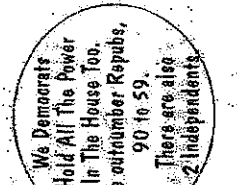
Rep. Dick Blanchard



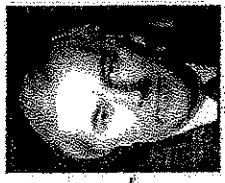
Rep. Emily Cain



Rep. Mike Dunn



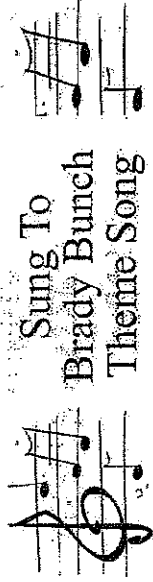
We Democrats Hold All The Power In The House Too. We outnumber Repubs, 90 to 59. There are also 2 Independents



Oh Yeah... Don't Forget This Guy Baldacci's Enforcer...

Perennial Eagle Lake All-Star, John Martin

# THE BALDACCI BUNCH



Sung To  
Brady Bunch  
Theme Song

Here's the story, Of a guy Baldacci,  
who was bringing up the taxes every day!  
All his plans increased the spending on the people,  
Penobscot Dems Will Vote His Way.

Here's the story, Of a girl named Schneider,  
Who never, ever, votes against the Guv.  
Grapes In A Bunch,  
Hanging all together, they're all deep in love.

Till the one day when the people put their foot down,  
Cause the tax and fees  
had made them toss their lunch,  
That this group,  
Get Voted Out Together,  
That's the way they'll go... Baldacci Bunch!  
Baldacci Bunch! - Baldacci Bunch!  
It's Time They Go Away Baldacci Bunch!

Stomp The Grapes on Nov. 4th!

Paid for and Authorized by the Candidate • Carr-Winocour for Senate, • A Clean Elections Candidate • 100 Gillman Falls Ave, Old Town, ME 04468.  
Please feel free to save this flyer and bring it with you on election day so you know who NOT to vote for after the Obama/McCain Race. It's Easy to Confuse State and Federal Politics

Dear Neighbors From Penobscot County,

I offer you this parody, but it's no joke, Maine cannot afford Two More Years of Gov. John Baldacci & John Martin.

Since the fine people of Eagle Lake are unlikely to vote Mr. Martin out of office, we must fix things ourselves.

Sen. Elizabeth Schneider and the Reps from Orono and Old Town continue to give Baldacci blank checks which he keeps signing! Running up state debts. Nice people, bad decisions.

While we can't vote Baldacci out of office, we can turn the State Senate and House to those who will cut off his funding.

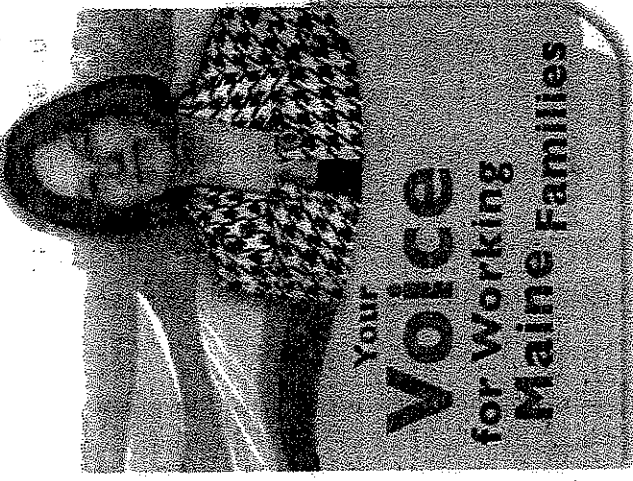
Maine's Senate has been run by the Democrats for a Decade and during this time Maine's spending has almost doubled!

This November 4th, VETO Baldacci, Vote Carr-Winocour. I ask humbly for your vote on Election Day! To volunteer and help the cause, please call 827-5265.

Together we can put an end to the mess in Augusta.

Valerie Carr-Winocour

VALERIE  
CARR-WINOCOUR  
STATE SENATE



# VETO BALDACCI - VOTE FOR C-W

# STRAIGHT FACTS FOR INDEPENDENT VOTERS

Is Maine Better Off Than It Was 10 Years Ago? Are You?

For 10 Years, The Democrats have Controlled the Maine Senate!

See for yourself on the State of Maine Website...

<http://janus.state.me.us/house/history/makeup.htm>

## Maine Senate Breakdown Last Decade

YEARS	DEMOCRATS	REPUBLICANS	INDEPENDENTS
97-98	19	15	1
99-00	20	14	1
01-02	19	15	1
03-04	18	17	0
05-06	19	16	0
07-08	18	17	0

## What has the Last Decade Brought Us?

HIGHER TAXES & HIGHER FEES

FEWER JOBS - LESS OPPORTUNITY

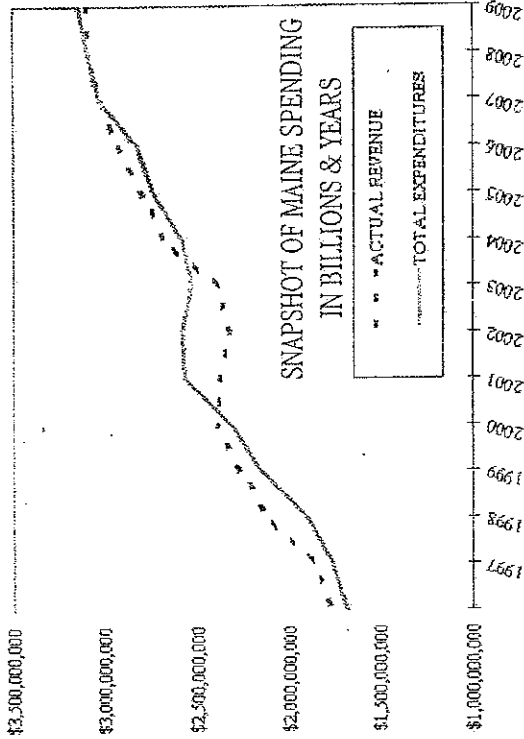
GAVE AWAY LIQUOR REVENUES TO MASSACHUSETTS

4 TOBACCO TAX INCREASES

\$40 MILLION IN NEW BEER, WINE & SODA TAXES

NEW TAXES ON HEALTH CARE SERVICES

AND \$1.5 BILLION IN NEW SPENDING



Schneider is a nice enough woman. But she's WRONG on the issues. She's voted time and time again with Baldacci to raise your taxes, to fund a failing Dirigo Health, to sell our liquor business, to raise tobacco taxes and make it tougher and tougher on working Maine families and small-businesses here in Maine.

YOU can become the VETO that stops the Baldacci Administration!

Swing the balance of power over in the Maine State Senate by voting for

**Valerie Carr-Winocour • Nov. 4th**

Serving Penobscot County - Alton, Argyle Twp., Bradford, Edinburg, Enfield, Greenbush, Howland, Hudson, Kingman Twp., LaGrange, Lee, Lincoln, Mattawamkeag, Maxfield, Old Town, Orono, Passadumkeag, Penobscot Nation Indian Island (a/k/a Penobscot Nation Voting District), Springfield, Twombly a/k/a T3-R1, Veazie, Webster Plantation and Winn.